UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia Corporation,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION
	)	FILE NO.: 1:10-cv-0082-CAP
CITY OF SANDY SPRINGS, GEORGIA, et. al.	)	
Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PARTIAL SUMMARY JUDGMENT

COME NOW the City of Sandy Springs, Georgia, and its named elected officials, Defendants in the above-styled action, and file this their Response to Plaintiff's Statement of Undisputed Facts in Support of Partial Summary Judgment.

Defendants do not dispute on summary judgment the following numbered facts: 1-34, 37, 39, 40, 43, 44, 46-48, 50, 52, 53, 55-62, 66, 67, 69, 71, 75, 77, 78, 81, 83, 84-86, 90, 91, 93-101, 103-106, 114.

Defendants dispute the following numbered facts on summary judgment:

35.

Plaintiff's characterization of this fact implies that to comply with the space requirements for Class Five Ideal Organizations a building must have at least 40,000 square feet.

This is not the case. While 40,000 square feet is the minimum amount of total space required for Class Five Ideal Organizations, nothing requires all 40,000 square feet to be contained in a single building. Plaintiff’s Class Five Ideal Organization in Seattle is composed of two separate facilities that only when combined satisfy the 40,000 square foot minimum space requirement. Wright Dep. p. 54, 123. The facilities are not on the same property and are about a “five minute drive” from each other. Id.

36.

Defendants dispute this fact as impermissibly vague and ambiguous based on Plaintiff’s use of the undefined term “newest.” To the extent that Plaintiff implies a comparison between its “newest” churches and the Subject Property, this fact impermissibly implies that Plaintiff has not been forced to abandon facilities purchased prior to 2007 when CSI issued its space requirements to bring them into compliance. Church facilities in Tampa, San Francisco, and Los Gatos were later determined to be spatially inadequate by the Church of Scientology. Wright Dep. Ex. 14. The Tampa facility was initially supplemented with a second building and has most recently been abandoned for a larger facility. Wright Dep. 123-24. The San Francisco facility has also been abandoned for a larger facility. Wright Dep. 128. The Los Gatos facility is being expanded in order to bring it into compliance with the Class Five Ideal Organization space requirements. Wright Dep. 126. Plaintiff's church in Seattle was also supplemented with a second building in order to bring it into compliance with the space requirement. Wright Dep. p. 54, 123. It is not factually accurate to compare the Subject Property, which was purchased prior to 2007, with any church facility or property purchased after 2007 as this fact implies.

38.

Defendants dispute this fact to the extent that Plaintiff uses it to imply that it is completely prohibited from practicing its religion due to the inability to renovate the basement parking garage on the Subject Property. From the time of purchase of the Subject Property in 2005 until now, Plaintiff has continued to adequately practice its religion, providing the necessary coursework and individualized counseling services to its congregants, in a "non-standard" facility three times smaller than the Subject Property. Danos Dep. p. 36-39.

41.

Defendants dispute this fact to the extent that it implies that all 43,916 square feet of the building on the Subject Property is developed as office space. In fact, the Subject Property contains 32,053 square feet of improved office space in three finished stories and an 11,193 square foot basement parking garage. Complaint ¶¶ 37, 38; Declaration of Nancy J. Leathers ¶ 5, hereinafter "Leathers Decl." The parking garage contains 30 parking spaces, close to a third of the total parking for the property. Complaint ¶ 48, Doc. 42-2 p. 22.

42.

Defendants object to this statement as argumentative and to the extent that Plaintiff uses it to imply that the basement parking garage is not considered to be part of the on-site parking. Complaint ¶ 48, Doc. 42-2 p. 22.

45.

Defendants dispute this statment to the extent that it implies that Plaintiff confirmed with the Defendants prior to the purchase of the Subject Property that the surface parking spaces were sufficient to serve its proposed expanded use. No such confirmation was requested or made by Defendants. Plaintiff was given a zoning certification confirming only that the Subject Property was located in an O-I district. Danos Dep. p. 85-88 & Ex. 5. The zoning certification letter provided no information concerning the restriction on the property requiring office use only. Id. at Ex. 5.

49.

Defendants dispute this fact as factually inaccurate and unsupported by Defendants Zoning Ordinance. Section 18.2.1 of the Sandy Springs Zoning Ordinance (the "Zoning Ord.") contains a schedule of parking requirements based on industry standards, broken down by use. Leathers Decl. ¶ 6. Based on the use of the property, Staff applies these standards to determine how much parking is required on the site assuming operation at full capacity. Leathers Decl. ¶ 6. For “Churches and Other Places of Worship” parking is generally calculated based on the total number of fixed seats or the total square footage of the largest assembly area. Leathers Decl. ¶ 7. A “Church, Temple, or Place of Worship” is defined as “a facility in which persons regularly assemble for religious ceremonies.” Zoning Ord. § 3.3.1. This definition assumes an assembly-type use for large congregational religious worship services. Leathers Decl. ¶ 7.

Early in the zoning process Plaintiff made clear to Planning Staff that Scientology was different from “traditional churches” in that the religion focused on individualized study and coursework rather than large congregational gatherings in the sanctuary. Leathers Decl. ¶ 8. This was further reflected by the fact, unlike most assembly-type churches, the 1,400 square foot sanctuary on the Subject Property only accounted for 3% of the gross floor area. Id. Furthermore, Plaintiff intended 100 staff members to be on site at all times, a staffing level never disclosed to the City during its deliberations. Danos Dep. p. 81-82. As such, Plaintiff’s main use of the property did not fall within the definition of a “Church” under the zoning ordinance and calculating parking based exclusively on the “Church” use standard, as Plaintiff chooses to do, in Section 18.2.1 is inadequate. Leathers Decl. ¶ 9.

Based on Plaintiff’s information concerning its operations, Staff requested from Plaintiff a breakdown of the facility’s various uses (office, classroom, sanctuary) by square footage, and then calculated the parking requirement under Section 18.2.1 by totaling the required parking for each type of use. Leathers Decl. ¶¶ 9, 10. Based on this calculation, Plaintiff’s renovation required 148 parking spaces. Leathers Decl. ¶ 10.

51.

While this is an accurate quote from Staff’s initial report, Defendants dispute the emphasis supplied by Plaintiff and the implication that Defendants inconsistently applied the standards of Section 18.2.1 by refusing to calculate Plaintiff’s parking requirement using “church” parking standard. As discussed in Defendants’ response to fact number 50 and noted in Staff’s initial report, Plaintiff volunteered that its use was not like a “traditional place of worship.” Doc 42-2 p. 22. As a result, Plaintiff did not meet the definition of a “church” under the Zoning Ordinance and application of the “church” parking standard was inappropriate. Zoning Ord. § 3.3.1.

54.

Defendants dispute this statement as improperly argumentative and factually inaccurate. Again, as detailed in Defendants' response to numbered fact 50, Defendants consistently applied the parking standards from Section 18.2.1 to calculate the parking requirement for the Subject Property. Furthermore, Defendants have never denied nor do they dispute the religious nature of Plaintiff's use. Plaintiff ignores the neutral, generally applicable use-based definition of "church" under the Zoning Ordinance and instead relies on the faulty premise that "all religious uses are church uses." See Zoning Ord. § 3.3.1. Under the Zoning Ordinance, a church is a type of facility that is used by religions in a particular way. Id.; Leathers Decl. ¶ 6. Not all religious uses are "churches" or are treated as such under the Zoning Ordinance – i.e. religious schools, boarding facilities, and daycare facilities. See Doc. 41, p. 8-14.

Doc. 41-11 pp. 4, 12.

63.

Defendants dispute Plaintiff's implication that the Parking Study's conclusions are an accurate assessment of the expected parking demand for the Subject Property. The parking studies submitted by Plaintiff failed to provide necessary evaluative information concerning the full operating capacity of each facility and how close each facility was to operating at full capacity at the time of the study. Leathers Decl. ¶ 13. Additionally, the parking study of Plaintiff's Dunwoody facility showed an average person to car ratio for Georgia congregants of 1:1. Doc 39-1 at p. 9. This stands in stark contrast to both the Nashville and Buffalo facilities where the ratio was closer to 2:1. Doc. 39-1 at p. 15; Doc 39-3 at p. 3. Given Plaintiff's plan to have 100 staff members on site at all times and utilizing the 1:1 person to car ratio for Plaintiff's Georgia congregants, it is implausible to suggest that of the remaining 11 (out of the 111 spaces planned) parking spaces would be sufficient to service the regular flow of congregants to and from the site throughout the week. Plaintiff's Response to Defendants' First Continuing Interrogatories at p. 5-6; Complaint ¶ 17; Leathers Decl. ¶ 8.

64.

Defendants dispute this fact as argumentative, inaccurate, and unsupported. As explained in Defendants' response to numbered fact 63, the conclusions of Plaintiff's parking study are incomplete and do not accurately predict the anticipated needs for the Sandy Springs facility. Furthermore, under Defendants' parking ordinance Plaintiff is required to provide 148 parking spaces. As described in Defendants' response to numbered fact 49, Plaintiff continues to misconstrue the nature of Defendants' parking ordinance and insists upon the correctness of its inaccurate parking calculation.

65.

Defendants, again, object to the Plaintiff's implication that the Parking Studies it provided to the Defendants were complete and that they accurately and definitively predict the parking demand for the Subject Property. Defendants' response to numbered fact 63 identifies the deficiencies of Plaintiff's parking studies and is incorporated by reference.

68.

Defendants dispute Plaintiff's implication that Defendants did not consider or evaluate the findings of the Parking Study. Defendants used the information from Plaintiff's parking study to calculate the more generous parking ratio applied in the July 16, 2009 report. Doc. 42-1 p. 44-46. The ratio that was derived reflected the fact that Plaintiff's parking study provided no information concerning the operating capacity of the facilities studied and how close to each was to operating a full capacity at the time of the study. Id. The study of the Nashville facility was particularly problematic in this respect because it had only been open for about 6 months at the time of study. Id.

70.

Defendants dispute this as argumentative, improper opinion, inaccurate and unsupported by the evidence in the Record.

Defendants' responses to numbered facts 63 and 68 fully explain the shortcomings of the Parking Studies and are incorporated by reference. To the extent that Plaintiff disagrees with Defendants' interpretation and use of the data provided in the Parking Study, that is better left to argument and is certainly not undisputed factual material.

72.

Defendants dispute Plaintiff's implication that the Buffalo Parking Study's conclusions are an accurate assessment of the expected parking demand for the Subject Property. The Buffalo parking study submitted by Plaintiff failed to provide necessary evaluative information concerning the full operating capacity of each facility and how close each facility was to operating at full capacity at the time of the study. Leathers Decl. ¶ 13. Additionally, the parking study of Plaintiff's Dunwoody facility showed an average person to car ratio for Georgia congregants of 1:1. Doc 39-1 at p. 9. This stands in stark contrast Buffalo facility where the ratio was closer to 2:1. Doc 39-3 at p. 3. Also, given Plaintiff's plan to have 100 staff members on site at all times, it is implausible to suggest that 29 parking spaces is sufficient to meet the parking demand from both staff and Plaintiff's congregants. Plaintiff's Response to Defendants' First Continuing Interrogatories at p. 5-6.

73.

Defendants dispute Plaintiff's implication that the Buffalo Parking Study was not considered or evaluated by Defendants. Nothing in the factual material cited by the Plaintiff supports such an implication. As discussed in the Defendants' response to numbered fact 72 and incorporated here by reference, the data from the Buffalo parking study was considered by Defendants and found to be lacking necessary evaluative information with respect to the operating capacity of the facility. Furthermore, the Buffalo facility was not comparable to the Subject Property because it lacked any designated on-site parking. Doc. 39-3 p. 2.

74.

Defendants dispute this statement as factually inaccurate and improperly argumentative. Staff did not introduce a new methodology for calculating Plaintiff's parking requirement in the August 18, 2009, report. Doc. 42-2 p. 54. Just as Staff had done in its previous report, Staff applied more generous 3 spaces per every 1,000 square feet ratio derived from the Nashville parking study data to derive a parking requirement of 130 spaces for the proposed 43,000 square foot facility. Id.

76.

Defendants dispute this statement as factually inaccurate and a misrepresentation of Staff's analysis. The August 18, 2009, report specifically concluded, "Based on the information provided by the applicant, the proposed request of 43,246 square feet would not meet the level of parking necessary to support the proposed use at full capacity." Doc. 42-2 p. 54 (emphasis added). Staff's narrative in the report makes it clear that its conclusions were based on Plaintiff's representations regarding its anticipated use and the parking studies. Id.

79.

Defendants dispute Plaintiff's representation that Defendants did not apply the parking standards from Section 18.2.1 when calculating its parking requirement. Defendants initially calculated Plaintiff's parking requirement using the standards from Section 18.2.1. Leathers Decl. ¶¶ 9, 10. The multi-use formula applied by Defendants to Plaintiff is consistent with that used for other multi-use religious facilities. Doc. 41, p. 8-14. Only after Plaintiff objected to Defendants' parking requirement did Defendants apply a more generous parking ratio at Plaintiff's behest based on the data provided by Plaintiff in its parking studies. Leathers Decl. ¶ 11, 14.

80.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-25. Having preserved its objection, Defendants raise it again here and requests that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

82.

Defendants dispute this statement to the extent that it represents or implies that the only parking standard applied to religious uses and facilities under Section 18.2.1 is that which is applied to "church" facilities. Section 18.2.1 contains a table of parking standards broken down by use. Leathers Decl. ¶ 6. The "church" use category assumes an assembly-type use. Leathers Decl. ¶ 7. Not all religious uses fall within the definition of "church" under the Zoning Ordinance. For instance, in calculating the parking requirement for Kadampa Meditation Center, Defendants applied a multi-use formula that totaled the amount of parking required for Kadampa's sanctuary (the "church" use) and boarding facility (the "boarding house" use). Doc. 41, p. 8-14. As another example, in the case of Congregation Beth Tefillah, which sought a use permit to construct and operate a preschool at its existing synagogue, the parking standard for a daycare facility was applied to the preschool, not the "church" use standard. Doc. 41-11 pp. 4, 12. It is inaccurate to imply that the “church” use parking standard is the only standard ever applied to determine the parking requirement for the various types of religious uses and facilities.

87.

Defendants dispute this fact and Plaintiff’s use of this fact based on the context in which the statement was made and the subsequent clarification given by the Director of Planning and Community Development. As the Director made clear in her deposition, “Fixed seats does not mean it’s affixed to the ground and can’t be moved. I think I said that at the beginning.” Doc. 41 p. 28. “Fixed contemplates that that’s the maximum number that you will have in there at any time and it can be calculated.” Id. at 29.

88.

Defendants dispute this statement as argumentative and improper opinion. There is no evidence to support any implication that Defendants acted improperly or misapplied the parking standards in Section 18.2.1. The fixed seat standard was applied to Lutheran Church of the Apostles because, as the Planning Director indicated, the 450 seats were, “… fixed in place almost all of the time and there’s only one configuration that works for the 450. And so they maxed out the number of, the number of seats that can go into the room. And even if they took some chairs out, there would still be parking for 450.” Doc 41 p. 28. The applicant indicated that the seats would be in place 95% of the time. Doc. 41-10 p. 18. The Planning Director further stated, “The most people that would be in the room would, we anticipated would be those which would be seated when they had the 450 seats in the room. So that is the largest parking requirement.” Id. at 29.

89.

Defendants dispute this statement as argumentative and improper opinion regarding the appropriateness of Defendants’ application of the fixed seat standard to Lutheran Church of the Apostles. Defendants' responses to numbered facts 87 and 88 are incorporated by reference and show that application of the fixed seat standard was appropriate.

92.

Defendants dispute this statement as argumentative, speculative as to the use of the former sanctuary, and unsupported by any evidence in the record. The citation provided by Plaintiff makes no reference to overflow seating in the former sanctuary.

102.

Defendants dispute this statement as improper argument and opinion. There is no evidence in the record to support the claim that Congregation Beth Tefillah was given favorable treatment by the Defendants. In fact, Plaintiff was given the same opportunity to come forward with a shared parking arrangement that demonstrated that it could provide sufficient parking. See Doc. 42-2 p. 26. Furthermore, Defendants recognize that it made a mistake in handling the Congregation's application by not requiring a variance, but that does not require Defendants to abandon the requirements of the Zoning Ordinance in all future cases. Doc. 41 p. 45.

107.

Defendants dispute this fact to the extent that Plaintiff uses it to imply that the quoted condition was imposed on the Kadampa Meditation Center property to ensure that the proposed facility complied with the Defendants parking requirement. The parking provided at the Kadampa Meditation Center exceeded the amount of parking required by Defendants. Doc. 41-6 p. 13. The condition was imposed by the City Council in response to community concerns expressed at the hearing. Doc. 41 p. 13-14. It was not a condition recommended by Defendants' Planning Staff as necessary to control any overflow parking since there was already sufficient parking on-site. Id.

108.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-28. Having preserved its objection, Defendants raise it again here and request that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

109.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-28. Having preserved its objection, Defendants raise it again here and request that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

110.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-28. Having preserved its objection, Defendants raise it again here and request that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

111.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-28. Having preserved its objection, Defendants raise it again here and request that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

112.

Defendants dispute this statement and object to its use as evidence. In deposition, Defendants objected to the form of the question that produced the response referenced here by Plaintiff as vague, ambiguous, speculative, and lacking foundation. Doc 42 p. 23-28. Having preserved its objection, Defendants raise it again here and request that this response be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

113.

Defendants dispute this statement and object to its use as evidence as beyond the scope of an affidavit and improper opinion testimony on an ultimate issue of fact. Legal conclusions, opinion, speculation or justification unsupported by facts are not permitted in affidavits. Fed. R. Civ. Proc. 56(e). As such, Defendants request that this statement be stricken from the record. A Motion to Strike and supporting Memorandum of Law have been submitted raising this and other objections and the Court should refer to those documents for further argumentation concerning this matter.

115.

Defendants dispute this statement as speculative, improper opinion, and unsupported by any evidence in the record. Nothing indicates that Plaintiff is forced or required to reengineer the existing facility on the Subject Property. Plaintiff has a variety of options including purchasing a supplemental facility or relocating to a larger facility. See Wright Dep. p. 122-28. Furthermore, the statement that reengineering the facility would be “prohibitively expensive” is pure opinion and speculation unsupported by any cost estimates, budgets, or figures.

Respectfully submitted this the 12th day of January, 2011.

/s/ Laurel E. Henderson
Laurel E. Henderson, Esq.
State Bar No. 346051

HENDERSON & HUNDLEY, P.C.
160 Clairemont Avenue
Suite 430
Decatur, Georgia 30030
Telephone (404) 378-7417
Facsimile (404) 378-7778
Email: lhenderson@bellsouth.net

/s/ Wendell K. Willard
Wendell K. Willard, Esq.
Georgia Bar No. 760300

WILLARD & SULLIVAN
Two Ravinia Drive, Suite 1630
Atlanta, Ga 30346
Telephone (770) 481-7000
Facsimile (770) 481-7111
Email: wendell.willard@sandyspringsga.org

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CHURCH OF SCIENTOLOGY OF GEORGIA, INC., a Georgia Corporation,	)
Plaintiff,	)
v.	) CIVIL ACTION
	) FILE NO.: 1:10-cv-0082-CAP
CITY OF SANDY SPRINGS, GEORGIA, et. al.	)
Defendants.	)

CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2011 I electronically filed the foregoing **DEFENDANTS' RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PARTIAL SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

G. Douglas Dillard, Esq.
Andrea Cantrell Jones, Esq.
Lauren M. Hansford, Esq.

/s/ Laurel E. Henderson
Laurel E. Henderson, Esq.
State Bar No. 346051

HENDERSON & HUNDLEY, P.C.
160 Clairemont Avenue
Suite 430
Decatur, Georgia 30030
Telephone (404) 378-7417
Facsimile (404) 378-7778
Email: lhenderson@bellsouth.net